

CONTRACTS WITH PROFESSIONAL ATHLETES

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The theme of the work is contractual relations with professional athletes in sports law. The article first attempts to define athletes from a legal standpoint. It then proceeds to analyze the various types of contracts that professional athletes engaged in sports activity might conclude when viewed through the prism of the Slovakia Labor Code, the Commercial Code and the Sports Act. It then explores how contracts in connection with the professional performance of sport are impacted by other regulations, both transnational and national. Special attention is given to the analysis of contractual provisions dealing with the termination of the contract on the professional performance of sports, both from the owner's and club's perspective and that of the athlete. Special emphasis is placed on analyzing moral clauses in such contracts as a legitimate reason for terminating the contract.

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1 Introduction

Sports have a unique place in society and the athletes engaged in sports, especially professional athletes, and those engaged in collective team sports, also find themselves in a rather exceptional space. They are what we might call hybrid workers. They have outstanding, individual talents, which set them apart, and in a sense are not your usual “employee” as we might commonly understand that term. Yet, when they are a part of a collective organization – a team – under the control of a club or some other organization, then we do see them more in the role of the traditional employee. As we shall see in this paper, the professional athlete’s unusual place in society has created difficulty in the law. This is particularly true when considering contractual relations between professional sports athletes and clubs and other organizations that retain them. The constant debate about the legal status of the athletes in individual and collective sports has been reflected in the possibility of concluding contracts according to various legal regulations due to the extensive diversity in regulating professional sports.

The unique nature of sports law, especially regarding the relationship between professional athletes and club/organization, has given rise to the existence of several options when concluding professional sports contracts. Indeed, every contractual relationship, even if it is based on contractual types of private law, is influenced by the particularity of sports law. Therefore, it is necessary to analyze contractual relations through the prism of this specialty.

In the Slovak legal environment, there are significantly more of these options for which the legal system might govern the relationship. This is evident from the wording of Act No. 440/2015 Coll. on sports and from the various amendments thereto (hereinafter referred to as the “Sports Act”), which make it clear that such sports contracts may have different characters. For example, they may have elements of a relationship established by labor law according to a contract on the performance of professional sports; they may be based entirely on the basis of labor law relationships; or, they may be based on another contractual relation. Those cases lacking any labor law characteristic will be subject to the provisions of the Act No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the Commercial Code). One of the aims of our analysis will be to ascertain the type of professional sports contract that will be governed by the Commercial Code. Further goals are to determine when one of the mentioned types of contracts will be used,

considering the division of professional athletes into individual and collective, but with an emphasis on collective sports, and which other regulations affect the content of the contract between a sports organization and an athlete in collective sports.

However, one aspect that has not received adequate attention in legal literature is the effect of the incorporation of so-called moral clauses into these contracts and their impact on the termination of a professional contract. Here, important questions include how does EU law, FIFA regulations, and national law regulate the termination of professional sports contracts when the athlete supposedly is in breach of a morals clause. Further, what limits do these frameworks impose on contractual autonomy in professional sport and how these provisions are conceived, whether they are governed by regulations, and if presently they are not, is there a need to do so. Further questions concerning moral clauses include whether the grounds that constitute bases for terminating a contract for just cause arising from a breach of a moral clause must be exhaustively listed or does it suffice that such conduct is identified more broadly, for example, as bad manners (or conversely, the athlete “must always act using good manners”).

The article employs a doctrinal legal methodology that mainly focuses on analysing court decisions and legal norms. Particular attention is paid to the Court of Justice of the European Union's jurisprudence on the application of internal market and competition law to professional sports. The article also examines the regulatory framework of international organization and compares them with state regulations under Slovak sports law and regulations of national associations. The article analyses the relationship between public legal regulation and the independent regulatory framework of sport using descriptive, analytical and comparative methods.

2 Definition of an Athlete

International scholarship has long debated how professional athletes should be classified legally. Professional athletes typically meet the requirements for employment, according to Simon Gardiner and Roger Welch,¹ because they perform sport for remuneration while simultaneously being subject to organizational control and subordination by sports organizations. However, scholars like Jack

¹ Gardiner, O'Leary, Welch et al., 2017.

Anderson² contend that professional sport represents a unique labor market requiring specialized legal solutions beyond conventional labor law frameworks due to its peculiarities, including transfer systems, competition regulations, and disciplinary mechanisms.

According to the Sports Act, an athlete is defined as a person who practices sports as a professional athlete, amateur athlete or as an unorganized athlete. The law does not define the status of the athlete and its concept. The division of athletes into professionals and amateurs, for example in football, is based on Article 2, paragraph 2 of the FIFA Regulations on the Status and Transfer of Players,³ which consider professional players to be those who have a written contract with a club and are paid more for their football activity than the expenses they effectively incur. All other players are considered as amateurs. The Sports Act does not specify the term, or the distinction of athletes, but determines the relationships based on which they can practice sports. Our focus will be on the professional athlete, and in particular, the specific type of contractual arrangement under which such professional athlete performs sports:

- a) based on a contract on the professional performance of sports;
- b) based on an employment relationship or a similar employment relationship according to a special regulation in a departmental sports center; or
- c) based on another contract as a self-employed person.

The Sports Act recognizes the mentioned ‘tripartition’ of relations. Which specific legal regulations apply depends on the category the athlete falls into. I will discuss each of these three options later in this paper. The issue of the status of athletes is debatable only in collective sports, or sports organized into clubs, which can also be individual sports, such as club boxing or tennis.

The principal, and mutual, obligations contained in contracts with athletes, regardless of whether they are concluded in any of the ways set forth above, are the obligation of the athlete to perform sports as the main form of their earning activity and the basic source of income and the corresponding obligation of the other contracting party to pay for the athlete’s performance of sports activities. There are,

² Anderson, 2010.

³ FIFA - Regulations on the Status and Transfer of Players, 2025.

of course, many other duties and obligations contained in sports contracts, though the athlete's obligation to perform and the other party's obligation to compensate the athlete for such performance constitute the most fundamental ones.⁴ And it is this sports activity and its subordination to work or business that will determine the athlete's status.

3 Sports Activity and the Labor Code

The exclusive application of the entire Act No. 311/2001 Coll. Labor Code as amended (hereinafter referred to as the Labor Code) without any modification is more complicated and raises more questions and problems than does the application of section § 269 para. 2 of the Commercial Code. According to the character of the sports activity of a professional player, professional player contracts should be governed by the Labor Code, as they meet all the established characteristics of work. Similarly, other authors such as Čorba state that the athlete's undertakings for a sports club mainly consists of repeating certain activities, according to the instructions of the employer, or of a specific superior person, who is usually a coach, at a time and place determined by the sports club, using equipment or tools provided by the club and at its expense. However, from the point of view of the overall spectrum of their activities for the sports club, the athlete lacks meaningful discretion in how to fulfill their duties and instead is largely bound by the instructions of the sports club.⁵ It was necessary to deal with an argument based on a social need and a situation where the Labor Code does not consider the specifics of a sports contract and is even inapplicable to sports contracts.⁶ Institutes of labor law such as working hours, duration of employment or termination of employment are inapplicable in view of customary sports practice.

The Supreme Administrative Court also commented on this in decision no. 2 Afs 16/2011 dated November 29, 2011. The Court stated that "e. g., It is difficult to imagine that a professional athlete could terminate his relationship with his club by unilaterally resigning (i.e. that he could subsequently transfer "for free" to another club, although the previous club raised him or "bought him"), or that the activities of athletes would be all provisions relating to working hours (including overtime) or restrictions established for concluding employment contracts for a fixed period (§

⁴ Kučera, 2012, p. 146.

⁵ Čorba, 2012, p. 71.

⁶ Jurka, 2018, p. 22.

39 of the Labor Code), etc., are applicable."⁷ This is also the case with pre-contractual relationships, where in labor law it is possible to ascertain the employee's state of health after the conclusion of the employment contract but before the employment relationship is established. Yet before the conclusion of the professional sports contract a medical examination is common practice. This is the case because a medical examination is an essential requirement of pre-contractual negotiations. Provisions on business trips are also problematic in the sports field, as it is common for sports activities to be performed in different places not only within the state but also in Europe or the world if clubs or individuals are involved in various European and other transnational competitions. It is therefore possible to determine the place work is performed either narrowly or broadly. The Labor Code assumes that the place of performance of work will be a municipality or an organizational unit but does not rule out that the place of performance of work may also be a place otherwise designated. The parties can mutually agree to a place of work performance, for example a specific workplace and the employer's seat, municipality, region, territory of the Czech Republic, etc.⁸

Although being a professional athlete involves many of the hallmarks of traditional work, yet it is very different in other aspects. The restrictions contained in the Labor Code could often complicate or even make sports activities impossible.⁹ Consequently, although it is true that it is impossible to apply every provision of the Labor Code to sports contracts, because they are not suitable by their nature, this does not mean that its application is absolutely excluded, because some provisions can be used supportively. In essence, it follows from the above that the provisions of labor law *de lege lata* are not suitable for their use in a contract with a professional athlete.

To help resolve this situation, Slovakia adopted special legislation relating to sports relations, which regulates the use of appropriate provisions of the Labor Code. We believe that it would be preferable to resolve this situation by incorporating the regulation relating to sports activities into the Labor Code itself, instead of splitting it into several smaller legal regulations, but basically this is only a theoretical issue.

⁷ Judgment of Nejvyšší správní soud sp. zn. 2 Afs 16/2011, 29 November 2011.

⁸ Judgment of Nejvyšší soud České republiky sp. zn. 21 Cdo 4213/2009, 29 July 2010.

⁹ Maisner et al., 2019, p. 23.

For example, the legal system of the Czech Republic has no sports law or any other type of regulation which allows for the application of the Labor Code. The reluctance to apply the Labor Code is nevertheless understandable, because if the legal relationship between a professional player and a club had to be governed by labor law, in the end it would actually mean an increase in the club's costs per player by 34%, due to the payment of social security insurance premiums and state employment policy, health insurance and pension insurance.¹⁰ Relationships in the performance of sports activities are therefore currently governed by the provisions of the Act No. 40/1964 Coll. Civil Code as amended (hereinafter referred to as the Civil Code) on innominate contracts, which is not optimal. According to the nature of the sports activity of a professional player, their contracts should be governed by the Czech Labor Code, as they meet all the established characteristics of work. Unfortunately, the Czech Labor Code does not consider the specifics of, and it is inapplicable to, sports contracts. Therefore, the subordination of the contractual relationship is left to the contracting parties.

Under Slovak law, relations arising in sports activities were addressed by adopting a special law. The Labor Code then governs the legal relations of professional athletes performing sports based on a contract on the professional performance of sports and to the legal relations of sports experts performing activities based on a contract on the performance of the activities of a sports expert, but only if this is established by a special regulation. A special regulation in this case is the Sports Act. It establishes that a professional athlete performs sports based on a contract on the professional performance of sports, based on an employment relationship or a similar employment relationship according to a special regulation in a departmental sports center or as a self-employed person an active person.

Sports activity, as we have indicated, has all the hallmarks of what we might categorize as traditional work. The Labor Code defines work as activities performed in the context of a relationship where the employer is the superior and the employee is the subordinate, where tasks are performed personally by the employee for the employer, according to the employer's instructions, on their behalf and during the working hours determined by the employer. A contractual relationship established by a contract on the professional practice of sports is considered a different type of labor law relationship. The Sports Act allowed the use of the Labor Code, and this

¹⁰ Chizzola & Radostová, 2012, p. 173.

needs to be emphasized, primarily for team sports, as well as the Commercial Code, especially for individual athletes.

In principle, the employment relationship is concluded in exceptional cases, such as in the National Sports Center, or a similar employment relationship in the Dukla Banská Bystrica Military Sports Center and the Center of the State Sports Representation of the Ministry of the Interior Affairs of the Slovak Republic.¹¹ Otherwise, working relationships in sports activities are not often concluded.

It may seem that research into the inapplicability of the Labor Code to employment relationships between professional athletes and clubs in team sports was only relevant until the Sports Act was adopted, by which the legislator effectively acknowledged the inapplicability of the Labor Code as a whole to regulating the relationship between a professional athlete and a club whose subject is the performing of sports in an employment relationship. However, for a comprehensive overview and understanding of the inapplicability of the Labor Code as a whole, it is necessary to at least present the context of this issue and outline the basic assumptions. And also, if the Sports Act still allows a professional athlete to perform sports on the basis of a contract on professional sports performance as well as on the basis of an employment relationship or a similar employment relationship under a special regulation, in a departmental sports center, it can be assumed that by not combining these two options, the legislator wanted to maintain the difference between a contract under the Sports Act and a contract under the Labor Code or similar regulation.

4 Sports Activity and the Commercial Code

According to the Commercial Code, entrepreneurship is defined as continuous activity carried out independently by an entrepreneur in his own name and on his own responsibility for the purpose of achieving a profit or for the purpose of achieving a measurable positive social impact, if it is an economic activity of a registered social enterprise according to a special regulation. An entrepreneur according to this law is:

- a) a person registered in the commercial register;

¹¹ Gábriš, 2013.

- b) a person who does business based on a trade license;
- c) a person who does business based on a license other than a trade license according to special regulations;
- d) a natural person who carries out agricultural production and is registered in accordance with a special regulation.

Although individual sports activities technically satisfy these criteria so as to qualify as a business, in reality sports activities of athletes who perform sports activities for a club, are less like that. Individual athletes can have the self-employed status and conclude contracts according to § 269 para. 2 of the Commercial Code. However, these will be contracts that will be concluded individually with the organizers of sports events in which the athlete will be interested in starting. In our opinion, such a contract has the elements of a contract for work, although the analogy is both tenuous and debatable. This is the case because if the creation of a work can also have an immaterial character as a result of mental activity, and similarly it can consist of services, i.e., an immaterial form of the work, so also the sports activity of a particular athlete is a kind of result of their mental, immaterial activity.

The question that then arises is whether supporting use of any type of contract is necessary at all. The answer is probably no. It will be sufficient if the contracting parties agree that the athlete will participate, agree on the amount of the compensation, the date when the event will take place and other conditions as determined by the rules of the relevant sports and sports organization.

Regarding the conclusion of innominate contracts with the club, the situation is a little more complicated. Before the law on sports came into effect, utilizing innominate contracts was a common practice, even though sports activities theoretically satisfied the classical characteristics of work. The practice was that clubs concluded innominate contracts with athletes according to § 51 of the Civil Code or § 269 of the Commercial Code, under the fiction that the athlete in collective sports was a self-employed person. The reason is more than obvious and does not need to be explored at length. The clubs were acting to promote their own economic interests by treating the athlete's remuneration as being derived from self-employment. Doing so shifted the burden away from sports clubs to satisfy obligations related to social security, and payment of advance tax on the income of athletes, and directly on to the athlete who became responsible for these

obligations.¹² The result is clear. Innominate contracts have never been suitable for collective athletes.

Yet in the legal system of the Czech Republic, contracts are still concluded as innominate contracts. Nevertheless, the Supreme Administrative Court of the Czech Republic had a different opinion. As mentioned above, in accordance with its previous jurisprudence, the Court stated that in materially assessing whether certain activities constitute work, it is necessary to consider whether the conclusion of the employment relationship should have taken place primarily in the interest of the person who performs this activity. Accordingly, it is not necessary to insist on the conclusion of employment relations, unless there is mutual interest in concluding them. This conclusion is perhaps a little contrary to the concept of banning the use of the legal fiction of self-employment in cases of actual work, even against the will and agreement of the parties involved, which prevailed in the European Union and the USA.¹³

Although the established practice of the courts in the Czech Republic still leans towards concluding professional contracts through innominate contracts, they admit that the signs of entrepreneurship are also weakened. The judgment of the Supreme Administrative Court no. 6 Afs 278/2016 states that a professional athlete in team sports performs their activity consistently and for the purpose of making a profit. Even though sports performing also shows strong elements of dependence on the sports club, its activity regarding the content of professional contracts can be considered as an economically independent activity. Just as in the case of a professional athlete's activity in team sports, the sign of independence is weakened, the two above-mentioned signs are also weakened, but not completely suppressed. The individual characteristics of the trade are therefore not fulfilled in pure form in the case of a professional football player. However, the legislation clearly establishes that the content of the *Activity of operating physical education facilities and organization of sports activities* includes, among other things, the activities of athletes performed independently and for the purpose of making a profit. Importantly, the legislation allows the activity of an athlete based on a trade license, without explicitly differentiating the activity in individual and collective sports.¹⁴ Although the legal regulation allows this possibility, the practice of using innominate contracts under

¹² Čorba, 2012, p. 72.

¹³ Čorba, 2012, p. 73.

¹⁴ Judgment of Nejvyšší správní soud sp. zn. 6 Afs 278/2016 dated 13. jula 2017.

civil or commercial law, at least in team sports, must be clearly rejected, a conclusion shared by Gábriš.¹⁵

However, the use of an innominate contract in individual sports also causes minor difficulties. A fundamental problem with their use is that the courts have failed to interpret them consistently, thus breeding uncertainty. Accordingly, it is therefore necessary to find some indirect contractual arrangements in the contracts. In other words, in the absence of a comprehensive legal framework, the excessively general provisions governing an innominate contract need to be supplemented, for interpretive purposes, by the regulations and rules of sports associations and federations. In professional contracts, this is usually made possible by final clauses, where the parties undertake to exercise mutual rights and obligations in accordance with the regulations of national and transnational associations. A professional athlete is always a member of an institution, sports union, or association of a certain sports sector, which, among other things, organizes and arranges the functioning of sports competitions in the relevant territory where the player receives a remuneration from the sports club for their sports performance.

With their membership, this athlete therefore acquires certain rights and obligations towards this sports institution of the relevant sports sector, or the relevant civil association. Concurrently, they acquire a certain relationship with certain rights and obligations towards the sports club, which, according to the degree of development of the given sports sector, has various internal regulations establishing individual rights and obligations for a professional athlete. An unclear conclusion follows from the above, since it is not possible to say with certainty what kind of indirect contractual arrangements are actually involved. The question remains relevant as to whether the reference in the so-called sports contract under commercial law regime to compliance with the regulations of sports organizations in sports can be considered a reference to trade customs in the given industry, or whether this reference partially includes general terms and conditions, or whether it merely constitutes auxiliary provisions for the interpretive rules in § 266 of the Commercial Code.¹⁶ This interesting question has not been fully answered even with the adoption of the Sports Act. It is difficult to assume that it causes major difficulties

¹⁵ Gábriš, 2013.

¹⁶ Kubiček, 2013, p. 117.

in individual sports, and therefore it can only be left on a theoretical level as a kind of minor issue.

However, it remains true that innominate contracts are unsuitable for athletes engaged in collective (team) sports and for athletes in individual sports who are required to be affiliated with a club. In contrast, they are appropriate for purely individual athletes. However, if, in the exercise of sporting activities in team sports, we refuse to conclude unnamed contracts and not all provisions of the Labor Code can be applied, then truly few options remain at our disposal.

5 Sports Activity According to the Sports Act

In principle, we are then left with only two options, one of which was reflected in the legal order of the Slovak Republic through the Sports Act, specifically the provisions on the contract on the professional performance of sports. It could be said that this contract is a kind of "employment contract" of a professional athlete. It represents a modification of those provisions of the Labor Code, which are used as an argument for the impossibility of managing sports activities under labor regulations.

5.1 Contract on the Professional Performance of Sports and its Classification

The explanatory report to the Sports Act states that a professional athlete and a sports organization are obliged to always use a contract on the professional performance of sports in the contractual arrangement of their relationship, if the sports activity of the athlete, which they perform for the sports organization, has the characteristics of work according to the Labor Code. The provision that this legal relationship established by the contract on the professional practice of sport is considered an employment relationship, i.e. that the sports organization becomes the employer and the athlete becomes an employee within the meaning of the Labor Code, while their rights and obligations in this relationship would be governed only by the Sports Act. Alternatively, the contractual relationship established by the contract on the professional performance of sports is considered a different employment relationship, as stipulated in the Sports Act in § 46 para. 1. The club must sign professional sports contracts with professional athletes, while other contracts will constitute a violation of the sports law. And players with other contracts can subsequently be labeled by the sports unions as players who played in

the competition without authorization, which creates the possibility of disciplinary action against both the players and the clubs themselves.¹⁷ The result is that the athlete becomes an employee of the sports club.

According to the provisions of § 102 para. 4 of the Sports Act, after December 31, 2018, contracts between athletes and sports clubs performing sports in a way that meets the characteristics of work were to be considered as contracts on the professional performance of sports. Here we can see the effort to organize previous relationships according to the Sports Act. However, the provision of § 106d of the Sports Act amended that the contractual relationship between an athlete and a sports organization that was established before February 1, 2020, if the athlete performs sports for a sports organization as a self-employed person, including in a way that meets the characteristics of work, is considered a contractual relationship based on a different contract according to this law than a contract on the professional performance of sports. In such cases, § 102 para. 4 does not apply. And so, despite the effort to transform relationships concluded earlier, it was not possible to successfully reach the intended goal. In principle, this is not such a problem. The important thing is that other contractual relationships with professional athletes in team sports must already be established by a contract on the professional performance of sports as another labor law relationship.

The adoption of the sports law act did not fulfill the thoughts of Dolobáč, who claimed that another option, in addition to developing special contract types for athletes, is to fully legalize the admissibility of atypical contracts in labor law by changing the provision of § 18 of the Labor Code and enshrining the provision similar to the provision of § 51 of the Civil Code. He did not advocate a special adjustment of the sports contract, but instead supported the overall liberalization of labor law, which in his view would ensure the possibility of enshrining the legal status of the athlete, which would simultaneously provide them both with the necessary social and legal protection while meeting the needs of their club.¹⁸ These considerations, regardless of whether we accept them or not, force us to think about the regulation of special contracts in a separate legal regulation or in the Labor Code. The fragmentation of civil law by a number of supplementary and secondary regulations is a non-systematic solution. Therefore, the Civil Code cannot be

¹⁷ Čollák, 2016.

¹⁸ Dolobáč, 2010, pp. 796 – 801.

considered a modern compliant legal regulation. Additionally, by amending special contracts on the basis of which it is possible to perform sports activity, or the status of athletes in other separate legal regulations, ultimately means the same for the Labor Code: fragmentation, non-uniformity and non-systematicity. This does not mean that adjusting these relations is useless and unnecessary. However, the optimal solution would be to make comprehensive, systematic changes to existing legal regulations, in this case undoubtedly the Labor Code, in the interest of maintaining uniformity in one clear legal regulation. Doing so would promote the salutary goals of uniformity and clarity and would avoid the existing ambiguities that continue to foster uncertainty, legal disputes and litigation.

Nevertheless, an important finding remains that this contract must be concluded between a sports organization and a professional athlete when performing sports activities in team sports. Of course, only with exception if the contract is not concluded according to the provisions of the Labor Code, which is concluded only in cases where he is an employee in the resort sports center.

5.2 Contract on the Professional Performance of Sports

The Sports Act establishes the written form and the essential elements of the contract on the professional practice of sports. These include:

- a) name, surname, date of birth, nationality and address of permanent residence or similar residence of the athlete or the athlete's legal representative;
- b) the name of the sports organization, the identification number of the organization, the legal form, the seat, the designation of the relevant register that registered the sports organization, and the registration number, name, surname, address of permanent residence or similar residence and the function of the person authorized to act on behalf of the sports organization;
- c) the duration of the contract, with the fact that a contract on the professional performance of sports can only be concluded for a certain period, the longest being five years from the date of entry into force of the contract, if the regulations of the sports association do not specify a shorter period;
- d) the type of sport to be practiced by the athlete;
- e) wages and wages conditions of the athlete;
- f) use and evaluation of personal rights of the athlete;
- g) amount of leave and method of taking it;

- h) the day of starting to perform sports, which must not be earlier than the date of entry into force of the contract;
- i) date of entry into force of the contract;
- j) place and date of contract signing.

Of course, it is also possible to agree on other conditions that are not fundamentally different from ordinary contracts establishing an employment relationship. Due to the specificity of sports activity, it is possible to consider as interesting sanctions for breach of contractual obligations or the extent of confidentiality. This is because, as already indicated, an athlete's duties pursuant to § 32 of the Sports Act are not typical, such as compliance with certain lifestyle activities agreed upon with the sports organization, such as not performing dangerous activities without the prior written consent of the sports organization, or not participating personally or through a third party on a betting game in the sport performed. Such restrictions are only typical of sports law.

The Sports Act also regulates working hours and rest and leave, as well as obstacles to performing sports, which due to the performance of sporting activities (such as football or hockey) must be adjusted differently from the provisions of the Labor Code. The Sports Act also regulate one more specialty, namely the temporary hosting of an athlete. An athlete who has a professional contract with a sports organization may be temporarily assigned to perform sports for the benefit of this sports organization, based on a written hosting agreement between the athlete, the sports organization with which the athlete has a professional contract, and another sports organization. Even though it is a specialty, it is very similar to the provision of § 58 of the Labor Code on the temporary assignment of an employee, when an employer or a temporary employment agency according to a special regulation can agree in writing with an employee in an employment relationship that they will be temporarily assigned to perform work for the user employer. During the temporary hosting of an athlete, not all conditions, such as salary conditions (they are usually preserved and only their payment, or the salary ratio between the visiting club and the club with which he has a contract for professional sports practice) are negotiated, as in the case of a temporary employee assignment.

5.3 Termination of the Contract on the Professional Performance of Sports According to the Sports Act

When analyzing this contract, it is necessary to pay particular attention to the possibilities of its termination, as it will be related to other considerations of the work. The contractual relationship established by the contract on the professional performance of sports expires *ex lege* upon the expiration of the period for which concluded, by the death of the athlete or his declaration as dead, or upon the dissolution of the sports organization without a legal successor. However, the contractual relationship established by the contract on the professional performance of sports can also be terminated in other ways, which are regulated by § 38 para. 2 of the Sports Act, specifically:

- a) by agreement;
- b) by notice of termination or;
- c) by immediate termination.

Ad a) The agreement on the termination of the contractual relationship established by the contract on the professional performance of sports is no different from the agreement on the termination of the employment relationship according to the Labor Code.

Ad b) The notice of termination must be written and delivered to the other contracting party, and the contract can be terminated by both the sports organization and the athlete. The athlete is entitled to terminate the contract on the professional performance of sports, if the sports organization has violated the basic obligation according to § 33 letter a), c) or letter d) of the Sports Act. This means if it failed to ensure the athlete was consistently prepared for competitions under the guidance of a coach with the required professional competence, failed to create suitable conditions for practicing sports or failed to allow the national sports representative to participate in the sports team. The first two reasons are characterized by a certain amount of vagueness. Neither the law nor the explanatory report specifies what conduct might trigger breach of the club's obligation to provide the athlete with continuous preparation for competition. Basically, under this term, it is possible to imagine a wide range of situations including the failure to provide adequate technical equipment, training facilities or professional care. Therefore, to avoid doubt, these conditions should be specified within the contract. Ultimately, it often becomes

difficult when a dispute arises to prove in what way the sports organization's obligations were violated. In our opinion, such formulated provisions cause unnecessary complications in the future.

Other reasons justifying an athlete to terminate their contract include if the sports organization failed to allow the athlete to practice sports according to the contract on the professional performance of sports for more than two consecutive months, or it failed to allow the athlete to participate in more than 10% of the competitions for the sports organization during the competition period even though he was medically fit to participate.

It will be more interesting for us, for the reasons stated later in this work, to analyze the grounds that sports organizations have to terminate the contracts of athletes on the professional performance of sports. In accordance with § 42 para. 1 of the Sports Act the sports organization is entitled to terminate the contract if:

- a) the athlete does not meet the medical fitness to perform sports for a long time according to the contract on the performance of professional sports; loss of medical fitness is proven by a medical opinion, according to which the athlete may not practice sports for a long time according to the contract on the performance of professional sports;
- b) the athlete violated the basic obligation according to § 32 letter b), e) to n) and at the same time, in the last six months, in connection with the violation of the athlete's basic obligation, he was warned in written form about the possibility of termination;
- c) the sports organization or its part is cancelled;
- d) there are reasons for which the sports organization could immediately terminate the contract on the performance of professional sports with athletes.

Particularly interesting is the violation of obligations resulting from § 32 of the Sports Act. In principle, all the obligations mentioned may seem remarkable, but they have their own logic and justification.

The Sports Act also allows the immediate termination of the contract on the professional performance of sports, both on the part of the sports organization and the athletes. Both parties have the option to immediately terminate the contractual relationship in the case of a serious violation of sports rules, regulations or decisions

of the relevant sports association or general mandatory legal regulations. In addition, the athlete has the option to immediately terminate the contractual relationship established by this contract if the sports organization has not paid the salary according to the conditions established in § 42 para. 2 letter a) of the Sports Act, if the athlete has lost his medical fitness to perform sports, or if the further practice of sports seriously endangers his life or health in accordance with § 42 para. 2 letters c) of the Sports Act.

The sports organization has the legal right to immediately terminate the contractual relationship if the athlete:

- a) violated the basic obligation according to § 32 letter a), c) or letter d), i.e. if he violated his obligations to participate in competitions and events determined by the sports organization, to prepare consistently for the competition according to the instructions of the sports organization, or not to participate personally or through a third person in a betting game in the sport he performs;
- b) participated without the consent of the sports organization in a competition for another sports organization;
- c) has seriously violated sports rules, regulations or the decision of the relevant sports association;
- d) violated the doping ban;
- e) manipulated the course or result of the competition or did not report the manipulation of the course or result of the competition to the sports organization entrusted with the management of the competition or to the law enforcement authority or;
- f) he was sentenced to a unconditional prison sentence.

This detailed analysis of the reasons justifying the termination of the contractual relationship established by this contract will be the starting point for our further considerations. So far, we have analyzed the termination of the contractual relationship only in terms of legal regulations. However, there are grounds other than legal regulations that have an impact on these contractual relations.

6 Other Regulations Affecting the Contract with Professional Athletes

In addition to the provisions of the Sports Act, or other laws, a special regulation found in the regulations of sports organizations shall also be used for contracts on the professional performance of sports. Which specific regulations affect the content of the contract with professional athletes will be best clarified directly by the provisions governing its termination, because those, as already outlined above, will follow the next chapter of this work.

The idea that professional sports are governed by a multi-level governance structure is becoming increasingly prominent in contemporary academia. Antoine Duval¹⁹ argues that international sports federations create a kind of global private regulation by exercising significant regulatory power through transnational regulations that directly affect athletes and clubs. Similarly, Lorenzo Casini²⁰ characterizes the sports regulatory framework as a sophisticated international administrative system in which commercial sports organizations perform governance responsibilities that were traditionally performed by public agencies.

6.1 European Union Law and the Jurisprudence of the Court of Justice of the European Union in Professional Sports Contracts

The contractual relationship between professional athletes and sports organizations extends beyond the scope of national labor law or the internal regulations of sports federations. Within the EU, professional sport is recognized as an economic activity and is therefore subject to EU law.²¹ Specifically, the legal framework for professional sports contracts is shaped by the Treaty on the Functioning of the European Union (TFEU), particularly its provisions on the free movement of workers (Article 45 of the TFEU), the freedom to provide services (Article 56 of the TFEU), and competition law (Articles 101–102 of the TFEU).²²

Key provisions of EU primary law relevant to this context include Article 45 of the TFEU, which guarantees the free movement of workers within the Union; Article 56 of the TFEU, which addresses the freedom to provide services; and Articles 101

¹⁹ Duval, 2013.

²⁰ Casini, 2011.

²¹ See Weatherill, 2013; Parrish, 2003.

²² TFEU, Articles 45, 56, 101–102.

and 102 of the TFEU, which govern competition law. These provisions apply to professional sports when sporting activities are performed as economic activities for remuneration. The Court of Justice of the European Union (CJEU) has consistently determined that athletes engaged in professional sport may be classified as workers or service providers under EU law, and that sporting rules are subject to EU law when they generate economic effects.

6.1.1 Free Movement of Workers and the Bosman Judgment

A decisive milestone in the application of EU law to professional sport is the judgment in *Union Royale Belge des Sociétés de Football Association ASBL v Bosman*.²³ The case concerned transfer rules in professional football that required payment of a transfer fee even after the expiration of a player's contract, as well as nationality clauses limiting the number of foreign EU players that clubs could field in competitions.

According to the CJEU, these regulations restricted workers' freedom of movement, which is protected under Article 45 of the TFEU. According to EU legislation, professional football players who offer services for pay are considered workers, and as such, they are free to travel between Member States without unreasonable limitations.

The CJEU concluded that transfer fees that are due after a player's contract expires limit labor mobility and are not permitted under EU law. The CJEU also ruled that nationality quotas that applied to EU citizens were incompatible with and violated the principle of non-discrimination based on nationality.

The Bosman ruling significantly changed how professional sports contracts are governed by the law. According to Stephen Weatherill,²⁴ the Bosman ruling demonstrated that sporting rules cannot escape the application of EU law when they have significant economic effects. It curtailed the regulatory authority of sports federations when their regulations clashed with essential EU liberties and reinforced the contractual position of players upon the expiration of fixed-term contracts. The Court established that contractual or regulatory procedures limiting a player's

²³ Case C-415/93, *Union Royale Belge des Sociétés de Football Association ASBL v Bosman* [1995] ECR I-4921.

²⁴ Weatherill, 2006.

freedom to seek employment in another Member State must be proportional and objectively justified from the standpoint of contract termination.

6.1.2 European Union Competition Law and the Meca-Medina Doctrine

*Meca-Medina and Majcen v. Commission*²⁵ offered additional clarification on the connection between sporting autonomy and EU legislation. In this instance, professional swimmers contested anti-doping penalties in front of the European Commission, claiming that they violated EU competition rules.

The CJEU rejected the claim that sporting regulations are automatically immune from EU law because they are "purely sporting" rules. Rather, it determined that when sporting restrictions have an impact on the economy, they are covered by Articles 101 and 102 of the TFEU.

The Court established a proportionality-based evaluation that determines whether sporting regulations are compliant with EU competition law based on:

- a) the validity of the goal being pursued;
- b) if reaching that goal will inevitably have limiting implications, and;
- c) if the actions are appropriate.

In European sports law, this method, also known as the Meca-Medina test, has emerged as a key conceptual framework. It requires that EU competition principles must be considered when evaluating sports legislation, especially contractual duties included in professional sports contracts.

The proportionality principle is especially important regarding codes of behavior, disciplinary regulations, and moral clauses in professional sports contracts that could result in penalties or termination. Therefore, any contractual restriction that affects an athlete's economic activity must pursue a genuine sports goal and not exceed what is required to accomplish that goal.

²⁵ Case C-519/04 P, *Meca-Medina and Majcen v Commission* [2006] ECR I-6991.

6.1.3 Protection of Training Investments and the Bernard Judgment

*Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC*²⁶ was another significant case involving a teenage football player that was compelled to pay compensation for refusing to sign his first professional contract with the team that trained him. Instead, he signed with a different club in a different Member State.

The CJEU recognized that recruiting and training young athletes is a legitimate goal that can support some limits on free movement. Nevertheless, the CJEU held that compensation plans must continue to be reasonable and restricted to covering real training expenses.

Under Article 45 of the TFEU, compensation systems may represent an unreasonable limitation on the free movement of workers if they place undue financial obligations on athletes or new clubs.

Therefore, the Bernard ruling affirms that contractual provisions intended to safeguard club investments must adhere to the proportionality standard. This logic also applies to clauses in contracts pertaining to unilateral termination of professional sports contracts or damages for breach of contract.

6.1.4 Earlier Rulings and the Economic Nature of Sport

*Walrave and Koch v. Union Cycliste Internationale*²⁷ was the first case to acknowledge that EU law applied to sports. The Court determined that sport is covered by the Treaty to the extent that it is an economic activity. The CJEU recognized that rules of solely sporting interest might not be covered by EU legislation, although this exception is only applicable in circumstances that have no bearing on the economy.

This Court expanded upon this basic holding in other rulings. The Court examined international competition selection standards and quotas in *Delière v. Ligue francophone de judo*²⁸ and concluded that such limitations might rationally be consistent with how sports are organized and therefore are not inherently contrary to EU law. Similarly,

²⁶ Case C-325/08, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC* [2010] ECR I-2177.

²⁷ Case 36/74, *Walrave and Koch v Union Cycliste Internationale* [1974] ECR 1405.

²⁸ Case C-51/96, *Delière v Ligue francophone de judo* [2000] ECR I-2549.

in *Lehtonen and Castors Canada Dry Namur-Braine*,²⁹ the Court examined professional basketball transfer dates and affirmed that non-discriminatory regulations may be illegal under EU law if they unnecessarily limit labor mobility.

6.1.5 Implications of European Union Law for Termination of Professional Sports Contracts

The CJEU's jurisprudence shows that professional sport in the EU functions under a more expansive constitutional framework established by EU law. This case law gives rise to several principles:

- a) According to EU legislation, professional athletes that engage in paid activities may be considered workers or service providers.
- b) EU free movement and competition law applies to sporting regulations and contractual clauses that have an impact on the economy.
- c) Contractual mobility restrictions must meet the proportionality principle and have justifiable goals.
- d) Compensation schemes cannot act as covert obstacles to mobility; instead, they must match actual costs or harms.

These principles severely restrict sports organizations' capacity to rely on widely defined contractual restrictions that limit athletes' economic independence when contracts pertaining to professional sports performance are terminated.

This is especially important regarding moral clauses. Sports organizations may rightfully aim to safeguard integrity, reputation, and ethical standards in sports, but if an athlete's ability to pursue professional activity within the domestic market is disproportionately restricted, termination based on ambiguous or overly broad moral provisions may be illegal under EU law.

As a result, sports federations' customary autonomy must be used within the bounds set by EU legislation. The preservation of fundamental economic freedoms granted by the European Union coexists with contractual stability and sports integrity thanks to the CJEU's jurisprudence.

²⁹ Case C-176/96, *Lehtonen and Castors Canada Dry Namur-Braine* [2000] ECR I-2681.

6.2 Termination of the Contract on the Professional Performance of Sports According to the Regulations on the Status and Transfers of Players of the International Football Federation

The Sports Act provides protection to professional athletes in several areas. As mentioned above, since the termination of the contract regulated in the Labor Code does not apply to sports activities, the Sports Act specifically regulates the conditions under which it is possible to give notice of termination to an athlete. These conditions are based on established reasons, but also follow up or supplement them, contained in the regulations of sports organizations. In football, these are primarily regulations promulgated by the International Football Federation (FIFA), but also those promulgated by sports organizations at the national level. While the legal reasons are an extension of those contained in the Regulations on the Status and Transfers of Players, that does not mean that they are inconsistent or contrary to them.

The termination of contracts between professional players and sports clubs was adopted by FIFA to the Regulations on the status and transfers of players, which were affected by the decisions in the Bosman and Bernard cases. Under the Regulations on the status and transfers of players a contract between a professional player and a sports club can only be terminated upon expiry of the term of contract for which it was concluded and by mutual agreement of the parties.

According to Article 14 of the Regulations on the status and transfers of players, the contract may be terminated by either party without consequences of any kind (payment of compensation or imposition of sports sanctions), if there is a legitimate reason for this, referred to as "just cause". In general, just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship. Any abusive conduct of a party, the purpose of which is to force the other party to terminate or change the terms of the contract, entitle the counterparty (professional player or sports club) to terminate the contract with just cause. These legitimate reasons include outstanding salaries and sporting just cause.

However, according to Article 16 of the mentioned Regulations on the status and transfer of players, the contract cannot be unilaterally terminated during the season, which means during a competition period. In case that the contract is terminated

without a just cause, consequences are set as a sanction for such termination. The party that violated the contract is obliged to pay compensation, which is calculated according to Article 17 of the Regulations on the status and transfers of players.

In addition to the obligation to pay compensation, any player found to be in breach of contract during the protected period will also be subject to sporting sanctions, which is a four-month restriction on playing in official matches, and in the case of aggravating circumstances, this restriction can last up to six months. These sporting sanctions can also be imposed on a club, not only if it terminates a contract with a professional athlete in breach of the contract and Regulations on the status and transfers of players during the protected period, but also on a player's new club if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach the contract during the protected period. These sanctions prohibit the club from registering any new players, either nationally or internationally, for two full and consecutive registration periods.

An acceptable termination of the contract for sporting reasons means that sporting sanctions will not be imposed, but both parties still must agree on financial issues. A player may terminate his contract in this way only within 15 days following the last official match of the club's season. It is unsurprising that the contracting parties typically agree on the amount of compensation in case of breach of contract in advance, due to the difficulty of the rules for determining its actual amount.³⁰

An interesting case of invalid termination of a professional contract was the case no. UKEAT/0660/03 *Wise vs. Filbert Realisations*³¹ (originally Leicester City Football Club) in England. During Leicester City FC's pre-season training, teammates Dennis Wise and Callum Davidson had an incident which resulted in a physical attack. As a result of the punch or punches to the face delivered by Wise, Davidson suffered a broken cheekbone with bruising and swelling around his right eye. This, of course, led to the termination of the contract in accordance with its provisions. Wise exercised his contractual right to appeal to the Football League's disciplinary committee, which conducted a full re-hearing, including calling relevant witnesses. The Disciplinary Committee found that Wise had committed a serious breach but noted that there had been procedural irregularities at the club level, as a result of

³⁰ Hamernik, 2012, p. 46.

³¹ Case no. UKEAT 0660_03_1122 *Wise v Filbert Realisations Ltd.*

which it decided to overturn the termination and impose a fine of two weeks' salary instead of termination. The club appealed the Committee's decision to the Football League Appeals Committee. The main ground of appeal was that having found serious misconduct, the disciplinary committee lacked the authority to find that the termination was inadequate and should have upheld the termination. The Appeals Committee upheld the appeal and confirmed the validity of the termination of the contract, but without re-examining the matter. The Employment Appeal Tribunal held that, given the initial procedural irregularities, the failure to conduct a re-hearing of the Appeals Committee before deciding to set aside the Disciplinary Committee's decision was an unreasonable procedural error and Wise was wrongfully terminated.³² It is possible to see from this procedure that the termination of a contract with a professional player is difficult, not only from the point of view of calculating or determining the amount of compensation for the termination of the contract, but also from a procedural point of view. It is therefore not surprising that unilateral contract terminations are very rare.

6.3 Termination of the Contract on the Professional Performance of Sports According to the Slovak Football Association

In addition to the legal regulations of states and international sports organizations, the field of law in sports is also regulated by the regulations of individual national sports organizations and associations as well. In the field of football in Slovakia, this is the Slovak Football Association (hereinafter referred to as SFZ).

At the national level, the contract on the professional performance of sports and its termination are governed by the Registration and Transfer Regulations of the SFZ. This regulation governs the contents of the contract and its minimum requirements, while it also contains a standardized model of the contract between a player with professional status and a club. These requirements also include the obligations of the club and the player, but they are identical to the obligations in the Sports Act. The requirements of the contract include the method of payment of remuneration or change of the method of remuneration, disciplinary rules, the amount of leave and the method of taking it, etc. The obligations that the contract must contain in the provisions concerning the protection of human rights, namely guaranteeing the player's freedom of expression, the prohibition of discrimination, and the

³² Welch, 2018, p. 5.

commitment of the contracting parties to act against racism and other discriminatory actions in football, are of particular interest and will be discussed later in this article.

According to Article 29 para. 7 and 8 of the Registration and Transfer Regulations, the duration of the contract between the professional and the club can only be terminated after the expiry of the period for which it was concluded or by mutual agreement, and the contract cannot be terminated unilaterally during the competition period. Either party can terminate the contract without consequences, i.e., without the obligation to pay compensation or without the imposition of a disciplinary sanction, if he has a legitimate reason (just cause). Here you can see a slight difference between the Regulations on the Status and Transfers of Players and the Registration and Transfer Regulations. While in the first regulation, an acceptable termination of the contract for sports just cause can result both in the payment of financial compensation and other sports sanctions, in the second regulation it is possible to terminate the contract without consequences, i.e., without the obligation to pay compensation. It would be appropriate to remove this contradiction because it may lead to discrepancy in certain cases. Namely, if the party were to appeal to the FIFA authorities, which ascertains the existence of a sporting legitimate reason on a case-by-case basis, and it confirms its existence, it would also order the payment of this compensation. Therefore, it would be appropriate to adjust the wording of subsequent provisions on compensation for breach of contract with a professional and termination of the contract with a professional without just cause. The calculation of compensation must remain, but in accordance with the Regulations on the status and transfers of players, as described above.

Articles 30 and 31 then regulate unilateral termination of the contract by the club and by the player, respectively. By comparing, we can conclude that they are identical to the obligations stated in the Sports Act, supplemented by delivery provisions and the possibility to terminate contracts within 15 days from the last competition match of the club in the competition season due to the reason contained in Article 31, para. 1 letter c) Registration and transfer procedure with the possibility of applying for compensation. It is necessary to inform the SFZ Registry, which will record the notice of termination and the immediate termination of the contract and will indicate the date of termination of the contract in the Central Register of SFZ members.

7 The Hybrid Legal Character of Professional Sports Contracts

Our analysis confirms that labor law, commercial law, and independent sports regulations fail to provide a sufficient understanding of the contract on the professional performance of sports. Instead, professional sports contracts are fundamentally hybrid in nature and located in a rather strange domain where several normative systems converge. The international regulatory framework of sport is often referred to in international studies as *lex sportiva*. Ken Foster³³ argues that *lex sportiva* is the body of international sports law that has been created by the rules of international federations and the case law of arbitration courts such as the Court of Arbitration for Sport. The contractual relationships between professional players and sports organizations are significantly influenced by this independent regulatory framework. Professional sports are both an economic activity and a deeply ingrained cultural practice, thus this hybridity is not accidental.

7.1 The Professional Athlete as a Normatively Hybrid Subject

The professional athlete simultaneously plays multiple roles that are significant to the law. First, the use of labor law principles is justified since they perform dependent work under conditions of subordination. Second, they work in a marketplace where their athletic achievements have marketable economic value, much like in an entrepreneurial setting. Third, they are governed by private sports associations' regulations, which control contractual stability, discipline, eligibility, and transfers. Lastly, they are a bearer of fundamental rights that are safeguarded by EU and constitutional law.

There is structural strain because of these multiple responsibilities. The athlete is neither a completely independent business owner nor a "pure" employee. They are also more than just a member of a private, voluntary organization. Their legal status results from the convergence of three normative regimes:

- a) state law (labor law, commercial law, constitutional law);
- b) transnational sports regulation (e.g., the regulatory framework of FIFA and national associations);
- c) European Union law, especially the jurisprudence of the CJEU.

³³ Foster, 2006.

Therefore, rather than being a straightforward bilateral private agreement, the professional sports contract must be seen as the result of multi-level governance.

7.2 Three Normative Principles: Stability, Economic Freedom, and Fundamental Rights

In order to arrive at a cogent, theoretical understanding of professional sports contracts, it is first necessary to determine the underlying values that influence such contracts. Contractual regulation must function inside what might be thought of as a "normative triangle" formed by these principles:

- a) contractual stability;
- b) economic liberty;
- c) fundamental rights protection.

Ad a) Predictable team composition and competitive balance are essential to sports competitions. The Regulations on the Status and Transfer of Players include compensation mechanisms, protected periods, and transfer procedures that represent these interests. Both economic planning and athletic integrity benefit from stability.

Ad b) According to EU law, professional sports are considered economic activities. The historic ruling in *Union Royale Belge des Soci. de Football Association ASBL v. Bosman* established that unreasonable mobility restrictions are incompatible with the internal market and that professional footballers are workers under Article 45 of the TFEU. Even justifiable goals, such as training compensation, must meet proportionality requirements, according to later case law, such as *Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC*.

Ad c) The freedoms of speech, religion, dignity, and nondiscrimination are still guaranteed to athletes. Both state intervention and, in some cases, the regulatory independence of private athletic organizations are restricted by these rights. In *Meca-Medina and Majcen v. Commission*, the Court rejected the idea of a "sporting exception" and used a proportionality test to examine sporting regulations that have an impact on the economy under EU competition law.

Thus, there is a triangular field of tension surrounding the professional sports contract. Any clause in a contract must be evaluated concurrently in light of all three principles, especially moral and termination clauses. Economic freedom may be violated by excessive rigidity; stability may be threatened by excessive flexibility; and fundamental rights may be violated by overly wide moral control.

7.3 “Just Cause” as an Open Norm and Constitutional Corrective

The hybrid and constitutionalized character of sports contract law is exemplified by the idea of "just cause." Instead of serving as a closed list of reasons for termination, it serves as an open normative clause. Its ambiguity is a reflection of the need to contextually find a balance between conflicting principles rather than just a legal shortcoming.

Accordingly, broad terms like good faith or misuse of rights in private law function similarly to "just cause." It allows adjudicatory bodies, such as FIFA dispute resolution chambers, arbitral tribunals, or domestic courts, to determine whether it is reasonable to anticipate the contractual relationship to continue in light of mutual trust, proportionality, and realistic expectations.

Theoretically, "just cause" functions as a constitutional remedy in the governing of private sports. It acts as a mediator between:

- a) the club's interest in discipline and protection of reputation;
- b) economic freedom and personal autonomy of the athlete;
- c) the systemic requirement for contractual stability.

7.4 Moral Clauses and the Limits of Private Normative Power

A particularly delicate example of this balancing exercise is found in moral clauses. They seek to safeguard sports organizations' reputation, brand value, and social responsibility pledges. But they also expand regulatory supervision into the athlete's private life, transcending athletic performance.

For moral clauses to be accepted under the suggested framework, they must meet at least four structural requirements:

- a) legitimate aim (e.g., to protect integrity, to prevent discrimination, and to preserve reputation);
- b) suitability;
- c) necessity, meaning that there is no less restrictive option;
- d) proportionality, especially regarding termination, which is the most serious contractual consequence.

Terminating a professional sports contract based only on widely defined moral standards runs the danger of disturbing the previously mentioned normative triangle. It might exceed what is legitimately required to preserve athletic integrity while disproportionately restricting economic freedom and fundamental rights.

7.5 Theory of Regulated Contractual Autonomy in Professional Sport

The listed structural factors imply that sports organizations' autonomy is neither complete nor fictitious. It functions as a type of controlled contractual autonomy that is incorporated into a larger constitutional framework. Contractual relationships may be shaped by sports associations to maintain the integrity and balance of competition, although this normative authority is subject to state law and EU norms.

Therefore, it is important to view the contract on professional sports performance as a constitutionally conditioned regulatory tool. Its ability to strike a reasonable and logical balance between stability, market freedom, and fundamental rights is what gives it legitimacy, not just adherence to national sports legislation.

8 “Moral Clauses” as a Legitimate Reason for Terminating a Contract on Professional Performance of Sports?

In both regulations discussed above, we could notice the term – just cause. However, the definition of "just cause", apart from the legitimate reason for non-payment of wages and sports reasons, when a professional player who has played in less than ten percent of the official matches in which his club participated during the season, is nowhere stated, or specified in more detailed way. A vague provision stating that, in general, just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship, cannot be fully considered a clear specification. It is possible that parties concluding

a professional sports contract can adjust such reasons individually in the contract. Yet what does just cause really mean?

Court of Arbitration (hereinafter referred to as the CAS) for *Sport Erik Salkic v Football Union of Russia & Professional Football Club Arsenal*,³⁴ reveals the problems faced by a player seeking to terminate his contract early and relying on the club's training or selection decisions. Before a player can terminate their relationship with his club, there must have been an action by the club that was serious enough for those who will eventually decide to conclude that the contractual relationship must be severed. The small cracks that may appear at the beginning of a relationship breakup are unlikely to be enough when they only appeared recently.³⁵

The concept of "reasonable cause" has been developed primarily through the case law of the CAS. Ulrich Haas³⁶ has highlighted that CAS panels typically use a contextual and proportionality approach when determining whether it is reasonable to expect a contractual relationship to continue. This interpretative approach has facilitated the gradual introduction of international standards governing contractual stability in professional football.

However, the jurisprudence of FIFA and CAS does not provide a clear answer to stakeholders on how to actually apply the provisions to a sporting just cause,³⁷ although they occasionally offer partial answers. As, for example, when the jurisprudence of the FIFA Dispute Resolution Chamber (hereinafter referred to as the DRC) shows that clubs can invoke just cause if players do not show up for training for a long time or if they violate football or sports regulations.³⁸ Nevertheless, a specific definition of just cause is missing.

Since this precise definition is not found either in individual regulations or in jurisprudence, it is possible to think about what could be included in just cause. This opens the opportunity to approach the issue, the so-called "moral clauses" or moral provisions contained in sporting regulations. If we consider these codes as sports

³⁴ Case CAS 2014/A/3642, *Erik Salkic v Football Union of Russia & Professional Football Club Arsenal*.

³⁵ Banerjee & Anderson, 2015.

³⁶ HAAS, 2012.

³⁷ Gradev, 2009.

³⁸ Auberg, 2020.

regulations, then their violation can be considered as a legitimate reason to terminate the contract on the professional performance of sports.

Morality provisions are primarily designed to promote positive images in society. According to Paul M. Anderson,³⁹ morals clauses are intended to protect sponsors' and sports organizations' reputations by allowing sanctions for athletes who engage in behavior that could damage the organization's reputation. In modern professional sports, an athlete's value extends beyond on-field performance to include public image, conduct, and alignment with organizational values. Both sports organizations and professional athletes strive to achieve this positive image. And it is the moral provisions that serve to ensure that the sports organization, as an employer in collective sports, obliges the athlete as its employee to refrain from such actions throughout the duration of the contract, i.e., while performing sports activities for the club, which could cause harm by damaging the organization's good name or brand. Such provisions, which would order a certain type of behavior or refrain from certain conduct, mostly apply to athletes and not to sports organizations. In case that a professional athlete as a well-known person commits an offense resulting not only from a violation of legal regulations but also from moral failings or social offenses, the negative character associated with such actions also damages the sports club.

8.1 The Athlete's Right to Freedom of Religion and Freedom of Speech in the Context of Moral Clauses

These offenses vary in nature, from non-compliance with lifestyle, drinking alcohol and drug use and subsequent inappropriate behavior under the influence of intoxication, or driving under the influence of alcohol⁴⁰ to various incidents of physical assault or abuse.⁴¹ Such offenses can also include various statements on social networks and for the media, the content of which becomes the subject of interest, especially for publicly known personalities such as athletes. Yet it is precisely in connection with professional athletes that this question becomes highly debated. On the one hand, they sometimes are criticized if they fail to publicly comment on issues such as human rights protection, then paradoxically, they might be punished

³⁹ Anderson, 2011.

⁴⁰ One of the last cases of Joelinton, who was charged with drink-driving. More details BBC, 2023.

⁴¹ For example, even animals, as was the case with West Ham United football player K. Zouma, who kicked his cat, recorded the incident and published it on social media.

for expressing their opinions, often even by the ultimate sanction of having their contract terminated. The sanction measures are taken under the pretext of violating the various sporting codes of individual organizations.

In the environment of professional sports, the most common example of the termination of contracts with professional players for political and religious reasons is the termination of sponsorship contracts. One such case is No. MLG 1695/2019 of *Israel Folau vs. Rugby Australia*. Rugby Australia contended Folau committed a high-level breach of its players' code, including the respectful use of social media, when he posted an image on Instagram warning that "hell awaits" homosexuals and other so-called "sinners." The code requires players to treat everyone equally, fairly and with dignity regardless of gender or gender identity, sexual orientation, ethnic origin, cultural or religious background, age, or disability.⁴² Rugby Australia terminated Folau's contract based on his post, contending the views that he publicly expressed were inconsistent with the Club's values, which included a desire to increase inclusivity. Folau sued the Club for wrongful termination. The case was successfully resolved following mediation.⁴³

A similar case involved American football player Colin Kaepernick, who refused to stand during the national anthem as a silent protest against racial inequality. Kaepernick's actions did not result in his club terminating his contract because Kaepernick chose to terminate his contract after the season. Kaepernick and others that study the league observed that quarterbacks with lesser talent were being drafted from the college ranks instead of signing him to their clubs. Consequently, there was growing suspicion that NFL owners saw him as a "problem" and likely did not want the negative attention that signing him would bring. Kaepernick maintained all along that he wanted to continue to play in the NFL, and on October 15, 2017, he filed a complaint with the NFL, accusing its 32 teams of colluding to keep him out of the league. On August 30, 2018, arbitrator Stephen B. Burbank ruled that Kaepernick's lawyers met the evidentiary threshold to allow the case to be heard at a regular hearing, which would mean a quick conclusion and the athlete's success in the proceedings.⁴⁴ Of course, such league-wide collusion (if indeed there was such collusion) to exclude a player from performing in his profession for having silently and peacefully expressing a view on human rights would be contrary not only to all

⁴² BBC, 2019b.

⁴³ More details BBC, 2019a.

⁴⁴ Boren, 2020.

basic human rights and freedoms but also to the provisions of the Labor Code on pre-contractual relations. It can be assumed that this is also why Kaepernick and the NFL reached a settlement agreement in February 2019, with both parties signing a non-disclosure agreement.⁴⁵

In our opinion, standing in contrast to the codes and clauses on morality are the freedoms of religion and belief, together with freedom of thought and conscience and freedom of expression, which collectively are among the basic human rights and freedoms guaranteed not only by the Constitution of the Slovak Republic but also by the European Convention for the Protection of Human Rights and Fundamental Freedoms and thus also the affected legislation of the Slovak Republic. Therefore, it is appropriate to question whether the provisions in such codes or professional player contracts conflict with the provisions of the above-mentioned regulations. In our opinion, such "restrictions" can be considered as violative of the mentioned legal regulations, which protect athletes in case such clauses interfere with their rights and thus violate the prohibition against discrimination. In principle, the sports organizations in the cases we mentioned understood this reality, which is why they reached settlements with the professional players.

The International Automobile Federation (hereinafter referred to as FIA) chose an interesting approach when it adopted provision 12.2.1.o. in the international sporting code. This establishes that the general making and display of political, religious, and personal statements or comments notably in violation of the general principle of neutrality promoted by the FIA under its statutes, unless previously approved in writing by the FIA for International Competitions or by the relevant organization for National Competitions within their jurisdiction,⁴⁶ will be considered a violation of the rules. Violations of this provision do not result in players having their contracts terminated, but they may suffer penalties or sanctions.

On the one hand, these rules "suppress" freedom of thought and speech, which finds support under the principles of neutrality. However, these rules suppress only a certain kind of freedom of thought and speech, namely that which is contrary to certain current public opinion. The question is whether such "restrictive" provisions must of necessity be included in the various statutes or regulations of sports

⁴⁵ Boren, 2020.

⁴⁶ FIA - International sporting code, 2026.

organizations. Unfortunately, the answer seems to be positive. There is overwhelming evidence that society is increasingly divided and seems to lack the ability to accept opposing points of view. If society is not tolerant, not only under the pretext of accepting a particular ideology or opinion to the exclusion of others (that is: if you do not recognize the same values as me, then you are not tolerant), to avoid further polarization of society, these morality regulations are perhaps appropriate at least for a certain time. The only way to truly ensure the free exercise of basic human rights and freedoms is to try to accept opposing views, even if perhaps without understanding specific opinions or ideas, but without insulting and dishonoring the opposite side. This is where true tolerance lies. We must remember that the basic imperative of law is that where the freedom of another begins my freedom ends. While it is unnecessary for everyone to be uniform and united, they should at least be able to accept each other. These comments, though they might be viewed as somewhat utopian in nature, and perhaps beyond the realm of the topic of this article, yet in a real sense do go to the heart of the matter.

Returning to our legal analysis, it would be reasonable to consider incorporating some kind of opposite moral clause, allowing the athlete, if not to terminate the contract, then at least to establish the right to sanctions, in cases where the sports organization the club or union damages the professional athlete's reputation by a statement that contradicts the athlete's views and whose image is very closely associated with this organization. Understandably, including such a provision will only be considered for very prominent athletes who have, one might say, more popularity than the sports organizations themselves. These reasons might include, for example, discovering that he uses goods from a sponsor that employs child labor or materials harmful to health, issues statements contrary to the principle of neutrality, directly or indirectly supports environmental pollution with his activity, etc.

In conclusion, the athlete's breach of moral provisions of any kind, whether contained in the contract or in sports codes, will not be a sufficient reason to terminate the contract between the sports organization and the athlete. However, it is possible and legitimate to contractually agree upon other sanctions for violations.

8.2 Moral Clauses and Environmental Issues

Professional athletes typically comment on issues of human rights and freedoms that are related to political issues, but relatively little on topics that would raise awareness of environmental problems. We can only assume that this is because these questions resonate less in society. Nevertheless, even environmental issues do not elude sport anymore.

Clubs or other sports organizations use various social responsibility initiatives to create a favorable image of their brand, to engender fan loyalty, and to help sell tickets. Even though environmentally sustainable practices are not yet completely self-evident as a way of operating, environmental practices contribute to the legitimacy of sports organizations. These can lead to improved branding and image, thereby attracting more fans and potential employees. These practices currently are not only acceptable, but expected in the sports industry by stakeholders, including employees, fans, professional bodies, and society at large. Concurrently, efforts towards sustainable development enable sports organizations to reduce the ecological footprint of sports and related activities and to use sports as a means of raising environmental awareness among a wide audience.⁴⁷ In relation to the ecological footprint and sport, we will stop briefly at this connection. The FIFA World Cup in Qatar in 2022 was supposed to be the very first instance of such a major event that would not emit “even the smallest gram” of carbon dioxide (CO₂), according to the organization committee and FIFA. Realistically, it is impossible to accurately estimate the carbon footprint of this World Cup, but it appears that it will be at least double that announced by the organization committee. However, the main criticism lies in the irrationality of organizing such an event in a country whose climatic conditions are ill-suited for the rigors of football, and which lacked the necessary infrastructure, because under normal circumstances, it is practically useless.⁴⁸ The construction of the infrastructure itself carries a certain environmental burden, which makes such statements seem illogical and incomprehensible. Therefore, it is only a matter of time before the athletes start to express themselves on this topic.

⁴⁷ Trendafilova, Babiak & Heinze, 2013, pp. 298-313.

⁴⁸ Mayer, 2022.

And again, the same problems that we outlined earlier can arise. Support for environmental policy can be incorporated into codes of conduct and/or contracts between a sports organization and a professional athlete. We saw an example of this in the Registration and Transfer Regulations SFZ in the case of Article 28 para. 17, which states that the contract must contain the commitment of the contracting parties to act against racism and other discriminatory behavior in football. The reason is clear: sport is a great communicator and platform for social change, which extends to environmental sustainability and pro-environmental behaviours.⁴⁹ Consequently, it is possible to expect that the commitment to act in ways that will improve the environment and that will raise awareness of environmental problems will also be part of future contracts. Alternatively, a situation may arise where the athlete publicly expresses contrary opinions. Nevertheless, we consider this case to be unlikely. On the contrary, the more likely scenario occurs when the athlete wants to publicly raise awareness about environmental problems, in conflict with the sports organization. The International Sports Code of the FIA, mentioned earlier, provides an example. It provides that raising awareness can be considered as making and displaying, if not political, then certainly personal statements or comments that could conflict with the general principle of neutrality. Once again, it is necessary to emphasize that such an action will not be a sufficient reason to terminate the contract between the sports organization and the athlete, but pre-agreed sanctions will be possible for this behavior.

9 Proportionality and Contractual Sanctions in Professional Sports Contracts

Contractual relationships between professional players and sports organizations function within a multi-layered normative environment, as the previous analysis showed. European Union law and international sports regulations, in addition to state laws like the Sports Act, regulate these relationships. The application of contractual consequences, whether monetary, disciplinary, or reputational, cannot be assessed exclusively through the prism of private contractual autonomy in this complicated context.

According to EU law, professional sports are considered economic activities. This was established in the Bosman ruling, which affirmed that professional athletes are

⁴⁹ McCullough, 2023, pp. 813-833.

covered by workers' freedom of movement. The Court of Justice later established in Meca-Medina that rules that are typically thought of as merely sports are subject to EU law when they impact the economy. Therefore, sporting autonomy is not unqualified; rather, it is contingent upon adherence to the concept of proportionality and fundamental liberties.

The legitimacy of contractual sanctions in professional sports must be evaluated using a structured proportionality analysis because they might have a substantial impact on the athlete's financial independence, professional reputation, and fundamental rights. This is true for both sanctions imposed directly under the Sports Act and those resulting from federation regulations, such as FIFA's Regulations on the Status and Transfer of Players.

Thus, the proportionality concept works as a unifying analytical instrument that can harmonize contractual autonomy, *lex sportiva*, and state law.

The proportionality test consists of four cumulative criteria, which are legitimate aim, suitability, necessity, proportionality. The contractual consequence becomes disproportionate and incompatible with higher normative norms if any one of these criteria is not met.

This test enables the methodical assessment of consequences related to termination, monetary compensation, disciplinary actions, and so-called moral clauses in the context of professional sports contracts.

The first step requires identification of a legitimate objective pursued by the sanction. Legitimate aims in professional sports usually consist of protection of sporting integrity (anti-doping, anti-match-fixing), ensuring contractual stability, protecting player training expenditures, preserving the fairness of competition, protecting the reputation and economic viability of the sports organization.

The CJEU in Bernard recognized the validity of protecting training investments and contractual stability. Similarly, maintaining sporting integrity is a fundamental institutional goal of organized sport. But not all reputational issues are inherently significant enough to be considered valid goals. The goal must be related to sport's structural or functional interests rather than just short-term public relations concerns.

The second step examines whether the sanction can accomplish the stated goal. For example, a doping suspension is appropriate for protecting the integrity of the competition since it eliminates the athlete whose behavior compromises fairness. In general, financial compensation clauses are suitable for maintaining contract stability and deterring various breaches.

On the other hand, it may be difficult to prove that a termination based solely on controversial public speech was appropriate. Even after dismissal, there may still be ongoing public debate, and other solutions, including internal disciplinary action or clarification, may be equally effective in addressing reputational issues.

Therefore, a logical relationship between the breach and the stated protective aim is necessary.

The most difficult part of the proportionality analysis is the necessity stage. It demands that no less restrictive action would be equally effective in achieving the same legitimate aim. Concerning athletic misbehavior, it is important to distinguish between serious, deliberate violations (match manipulation or systematic doping) and minor or first violations.

Immediate termination may not meet the necessity criterion if less severe sanctions, such as warnings, fines, temporary suspensions, or conditional measures, could adequately protect the relevant interest. This is especially important regarding moral clauses. Termination will rarely meet the need condition if an athlete's behavior consists of legal expression that does not directly affect athletic performance or regulatory compliance. In terms of the athlete's financial and professional standing, alternative approaches are typically more accessible and less invasive.

The last step requires balancing the severity of the sanction with the importance of the protected interest. Here, the athlete's right to practise a sport profession, economic freedom, contractual mobility, freedom of expression and conscience, and protection of personal reputation must be weighed against the club's financial interests, integrity of the institutions, fairness of competition, and reputational factors.

The sports organization will typically win in situations when the athlete's conduct in question threatens significant risks to sporting integrity, such as doping or match-fixing where, the core principles of competitive sport would be compromised by continued cooperation. However, if the alleged breach involves legitimate political, religious or social expression and there is no evidence of direct operational loss, termination of the contract could represent an excessive burden for the athlete compared to the club's interest in brand management.

Contractual sanctions cannot therefore operate as disguised restrictions on fundamental freedoms thanks to the balancing process. Financial penalties and compensation provisions require special consideration. Such mechanisms must correspond to actual or reasonably expected damage, even though they serve legitimate interests in maintaining contractual stability.

Excessive remuneration conditions increase the potential to act as de facto barriers to mobility, which could be considered contrary to the Bosman principles. Based on the Bernard case, financial mechanisms must be proportionate to the costs of training and legitimate economic interests.

Contractual stability could be transformed into economic coercion through a compensation clause that significantly exceeds the quantifiable damage. Such restrictions threaten the balance between protecting the club's investment and the athlete's right to labor mobility.

When the breach is so serious that fulfilling the terms of the contract would fundamentally contradict the fundamental institutional ideals or rules of the sport, there is normative incompatibility. Such examples may include established doping violations, match manipulation, serious criminal activity that has a direct impact on credibility, persistent refusal to fulfill essential sporting obligations etc.

However, moral incompatibility does not always result from reputational damage, ideological disagreements, or legal expression, unless there is observable structural harm.

This interpretation guarantees consistency between contractual practice and higher normative ideals and harmonizes the idea of just cause with the proportionality principle.

Professional sports contracts cannot be viewed as exclusively private mechanisms, as demonstrated by the application of proportionality to contractual sanctions. They operate within a normative framework that has been constitutionalized, where fundamental rights restrict contractual autonomy, sports autonomy is examined by the courts, state and EU law connect with *lex sportiva*.

Proportionality therefore serves as the primary mechanism for harmonisation. It also prevents sanctions from becoming instruments of excessive control or indirect restrictions on professional freedom, while protecting the legitimate interests of sports organisations.

The concept of proportionality offers a logical framework for assessing contractual penalties in professional sports contracts. It can then ensure that sanctions aim to achieve legitimate objectives, are meaningful in relation to those objectives, are the most effective and least restrictive methods and strike a fair balance between individual rights and institutional integrity.

This framework prevents financial penalties from becoming disproportionate obstacles to mobility, clarifies the idea of just cause and limits moral clauses to objective standards.

Professional sports contracts are embedded in a multi-level normative system where contractual stability, sporting integrity and fundamental rights must coexist in balance. This confirms the inclusion of proportionality in sports contract law.

10 Conclusion

The aim of this article was to determine when one of the mentioned types of contracts will be used, considering the division of professional athletes into individual and collective sports, and with an emphasis on collective sports, which type of contract will be governed by contracts concluded under the Commercial Code. The goal has also been to ascertain which other regulations affect the content of the contract between the sports organization and the athlete in collective sports and the influence of moral provisions on the termination of the professional contract.

First, it was necessary to define the status of the athlete, based on the possibility to divide them into professionals and amateurs. Depending on the type of contract he concludes, according to the Sports Act, the status of athletes as employees or entrepreneurs or, a status based on a contract on the professional performance of sports, even though *de jure* he is an employee, is further developed.

According to the Labor Code, an employment relationship is concluded in collective sports only in exceptional cases in resort sports centers such as the National Sports Center, or a similar employment relationship in the Dukla Banská Bystrica Military Sports Center and so on. Therefore, we concluded that because the provisions of *de lege lata* labor law, as a whole, are not suitable for their use in a contract with a professional athlete, it is necessary to consider other contractual options that the legal order allows for athletes performing outside of resort sports centers.

One such alternative is the conclusion of innominate contracts, that is, ones that do not fit into any specific, legally recognized category, but the practice of using these contracts under civil or commercial law in collective sports must be clearly rejected. These types of contracts are sometimes used in individual sports activities that fulfill the characteristics of business. Individual athletes, for example, can have the status of a self-employed person and thus conclude contracts according to § 269 para. 2 of the Commercial Code. However, these contracts are concluded individually with the organizers of sports events at which the athlete will be participating. The contract will be innominate, and no supporting use of any contract type is required. It will be sufficient if the contracting parties agree that the athlete will start, agree on the amount of the remuneration, the date when the event will take place and other conditions determined by the rules of the relevant sport and sports organization.

Nevertheless, if in team sports, we refuse to conclude innominate contracts and the provisions of the Labor Code as a whole cannot be applied, then we lack many remaining options. Accordingly, it is possible to state that an important finding stemming from our analysis is that the most suitable, and indeed the only type, according to which it is possible *de lege lata* to conclude a contract between a sports organization and a professional athlete when performing sports activities in team sports, is a contract on the professional performance of sports according to the Sports Act.

The relationship between an athlete and an organization is governed not only by the provisions of the Sports Act, or by other laws, but also by a special regulation that is found in the regulations of sports organizations. These can be found in the regulations of the International Football Federation together with those contained within individual national sports organizations. The truth is they mostly echo the regulations of the international organization with additions of various technicalities, etc. We demonstrated this to be the case when we analyzed the provisions on termination of contracts in connection with the difficult question of moral clauses.

Another research goal was to ascertain what influence moral provisions have on terminating professional sports contracts and their relationship to just cause. The precise definition of just cause is not found either in individual regulations or in jurisprudence, but as we analyzed their nature, it is possible to conclude that moral provisions of any kind, whether contained in a contract or in sports codes, will not justify terminating a contract between sports organization and athletes, although it is possible and legitimate to grant pre-arranged sanctions for violations.

Our analysis also demonstrates that the legal regulation of professional sports contracts reflects the unique nature of sports law, which combines elements of labor law, commercial law and autonomous sports regulations. The Sports Act therefore represents an important instrument that attempts to balance the need for legal certainty, social protection of athletes and the flexibility required in professional sport.

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